

the resources of an alien sponsor, where appropriate.

(b) A State may exempt categories of recipients otherwise required to report monthly from reporting each month with prior approval by the Secretary if the State can demonstrate that not requiring these cases to file monthly reports is cost effective. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver. A decision by the Secretary not to approve a request for an exemption is not appealable. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

(c) States shall also direct recipients to report information as defined in paragraph (a)(2) of this section to the agency as they become aware of expected changes rather than waiting to inform the State on the monthly report.

[47 FR 5679, Feb. 5, 1982 as amended at 49 FR 35602, Sept. 10, 1984; 57 FR 30160, July 8, 1992]

**§ 233.37 How monthly reports are treated and what notices are required (AFDC).**

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report as specified in § 233.36, and if all eligibility conditions are met, it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is terminated as a result of information provided in the monthly report. The notice must be mailed to arrive no later than the resulting payment or in lieu of the payment. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(b) *What happens if a completed monthly report is not received by the agency.* An agency may terminate assistance if it has received no report or has received only an incomplete report as defined by the State. In this case, the agency must send the recipient a notice meeting the requirements of § 205.10(a)(4)(i)(B) to arrive not later than the date it would have made payment if the agency had received a completed monthly report on time. If the recipient notifies the agency and files a completed report within 10 days of the date of this notice, the agency must accept the replacement form and make a payment based on the information on the form if the information indicates that the person is still eligible (without the applicable earned income disregards if the State agency determines no good cause exists for failing to file a timely report of earnings). If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(c) *What happens if a completed monthly report is received but is not timely.* States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes in earnings which impact eligibility. States must inform recipients what constitutes timeliness and that no disregard of earnings as described in § 233.20(a)(11) (i) and (ii)(B) (\$30 and one-third, child care, and work expenses) will be applied to any earnings which are not reported in a timely manner without good cause. The State must provide recipients an opportunity to show good cause for not filing a timely report of earnings. If the State finds good cause, then applicable earned income disregards will be applied in determining payment. If the State does not find good cause, then applicable earned income disregards will not be applied. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the

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State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

[47 FR 5679, Feb. 5, 1982]

## § 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.

(a) States may request waivers of the requirements at §§233.31–233.37 to promote compatibility with monthly reporting and budgeting requirements of the Food Stamp Act of 1977 as amended.

(b) The Secretary will not approve requests for waivers unless the information documenting the need for the waiver shows that the waiver would simplify administration of both programs and would not result in a net cost to the Federal government. Approvals for waivers will be for periods up to one year, after which time the State may request an extension of the waiver.

(c) Any decision by the Secretary not to approve a request for a waiver is not appealable.

[49 FR 35602, Sept. 10, 1984]

## § 233.39 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19.

(iii) In AB or AABD with respect to the blind, any age;

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(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

[36 FR 3866, Feb. 27, 1971. Redesignated and amended at 47 FR 5678, Feb. 5, 1982]

## § 233.40 Residence.

(a) *Condition for plan approval.* A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (b) of this section. For purposes of this section:

(1) A resident of a State is one: (i) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(b) *Exception.* A State plan under title I, X, XIV, or XVI need not include an